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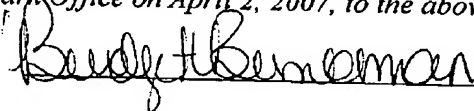
Fax No. 513-634-3848

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Application No. : 10/791,976  
Inventor(s) : Diana Lynne Gann et al.  
Filed : March 3, 2004  
Docket No. : 9566

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1) Appeal Brief (14 pages)

Number of Pages Including this Page: 15

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/791,976  
Inventor(s) : Diana Lynne Gann et al.  
Filed : March 3, 2004  
Art Unit : 3761  
Examiner : Karin M. Reichle  
Docket No. : 9566  
Confirmation No. : 4843  
Customer No. : 27752  
Title : TAMPON APPLICATOR HAVING A RUPTURABLE  
MEMBRANOUS CAP

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on 1 November 2006.

A timely Notice of Appeal was filed on 31 January 2007. The Appeal Brief is being filed within two months of the filing of the Notice of Appeal as 31 March 2007 was on a Saturday.

**REAL PARTY IN INTEREST**

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

**RELATED APPEALS AND INTERFERENCES**

There are no known related appeals, interferences, or judicial proceedings.

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#### STATUS OF CLAIMS

Claims 1, 2 and 5-11 are pending in the present application.

Claims 1, 2 and 5-11 are rejected.

Claims 1, 2 and 5-11 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

#### STATUS OF AMENDMENTS

Amended drawing were sent to the Examiner on 2 April 2007 in response to form PTO-948.

#### SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is directed to a feminine hygiene product as claimed in claim 1. (Spec. Page 4, Lines 9-14) The feminine hygiene product (Spec. Page 4, Lines 9-14) comprises a tampon (Spec. Page 5, Lines 21-24) comprising an outer tampon perimeter (Spec. Page 8, Line 26), a withdrawal end opposed to an insertion end (Spec. Page 8, Lines 25-26), said insertion end comprising a top portion (Spec. Page 7, Line 18). The feminine hygiene product (Spec. Page 4, Lines 9-14) also comprises a tampon applicator (Spec. Page 15, Lines 28-31) comprising a rupturable membranous cap (Spec. Page 9, Line 10 to Page 11, Line 18) permanently associated with a tampon holder tube (Spec. Page 4, Lines 16-17).

The tampon holder tube (Spec. Page 4, Lines 15-23) comprises a hollow interior portion, an interior surface, an exterior surface, an outer perimeter, a longitudinal axis, a first end (Spec. Page 6, Lines 28-30) dimensioned for insertion into the vaginal cavity (Spec. Page 2, Lines 15-16), and a second end positioned oppositely to said first end (Spec. Page 6, Line 30 to Page 7, Line 1).

The tampon (Spec. Page 5, Lines 21-24) is housed in said tampon holder tube within said hollow interior portion of said tampon holder tube and substantially aligned

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with said longitudinal axis of said tampon holder tube in a pre-expelled position (Spec. Page 2, Lines 17-19).

The rupturable membranous cap (Spec. Page 9, Line 10 to Page 11, Line 18) covers at least a portion of said insertion end of said tampon (Spec. Page 9, Lines 17-19), whereby during expulsion of said tampon from said tampon holder tube, said tampon contacts said rupturable membranous cap (Spec. Page 5, Lines 24-27), thereby reorienting said tampon into a direction substantially non-aligned to said longitudinal axis of said tampon holder tube (Spec. Page 6, Lines 11-14).

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The drawings have been objected to because a full set of figures correcting the formalities noted in the PTO-948 form has not been submitted.

The drawings have been objected to because it has been alleged that Figure 1 does not show the finger grip as shown in Figure 2.

The drawings have been objected to because in Figure 1a it has been alleged that tampon 14 and the line there from should be shown in dashed lines to show underlying structure.

The drawings have been objected to because in Figure 1a it has been alleged that numeral 20 does not clearly denote the outer perimeter.

The drawings have been objected to because in Figure 1b it has been alleged that the ridge at the opposite end adjacent 20 in Figure 1a is not shown.

The drawings have been objected to because it has been alleged that Figure 2 is not a cross section along 2-2 as described on page 3.

The drawings have been objected to because it has been alleged that Figure 2 the bracket denoted by reference number 26 does not denote only the end of the tampon 14 as described.

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The drawings have been objected to because it has been alleged that Figure 5 does not clearly denote reference number 15 therein.

The description of Figure 2 on page 3 has been objected to because it has been alleged that the description of Figure 2 on page 3 is inconsistent with the Figure 2 and page 7, lines 15-16.

It has been alleged that the relationship between the tampon and the cap is unclear, as in claim 1, Appellant claims a cap permanently associated with the tube. The Office Action of 1 November 2006 applied the following definition to the term "associated", "to bring into company with one another, join in a relationship". Using this definition the Office Action alleged that, a cap "permanently associated" with the tube interpreted in light of this definition, and page 5, line 20 and page 11, lines 7-10 is deemed to require permanent joining or attaching, directly or indirectly, of the cap with the tube. The Office Action further alleged that Claim 1 further requires the tampon, i.e., some portion thereof, to "contact" the cap during expulsion to reorient the tampon with regard to the tube. The Office Action further alleged that the definition of "contact" as usually defined means "to touch", yet, despite the cancellation of claims 3-4, the specification still describes the cap remains in association with the end of the tampon and/or the cap remains joined to the end. The Office Action compared page 2, lines 26-28, the fourth full paragraph on page 7, the first full paragraph on page 8, and section I. on pages 9-11 and alleged that they do not clearly delineate the invention. Therefore, the Office Action alleged that it is still unclear whether the terminology of claim 1 requires touching but not necessarily "joining" and "association", i.e. "associated" and "joined" appear to both require some type of connection, i.e. at a minimum indirect connection, and whether such is with respect to at least a portion thereof but not necessarily the end of the end because the description used to interpret the claim terminology still uses the terminology "remains in association" with the end or "remains joined" with the end, i.e. does the tampon touch the cap at a minimum or is it associated or joined thereto? Some portion at a minimum or the end? The Office Action further alleged that if at least some

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portion of the tampon is joined or associated, the entire tampon is also, i.e. at least indirectly, i.e. if the end remains associated or joined so does the entire tampon.

Claims 1-11 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as their invention.

### ARGUMENTS

#### Drawings

*The drawings have been objected to because a full set of figures correcting the formalities noted in the PTO-948 form has not been submitted.*

Appellants submitted a complete set of figures for the Examiner's consideration on 2 April 2007.

*The drawings have been objected to because it has been alleged that Figure 1 does not show the finger grip as shown in Figure 2.*

Following the appeal process, Appellants will amend Figure 1 to include the finger grip as shown in Figure 2.

*The drawings have been objected to because in Figure 1a it has been alleged that tampon 14 and the line there from should be shown in dashed lines to show underlying structure.*

Appellants respectfully traverse this objection. The tampon denoted by reference number 14 is not underlying structure, as it is being viewed through a cut out section as shown in Figure 1. The dashed lines in Figure 1 denote the perforations along the line of

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rupture 18 not underlying structure. Additionally, Apellants have removed reference number 21, which had dashed lines.

*The drawings have been objected to because in Figure 1a it has been alleged that numeral 20 does not clearly denote the outer perimeter.*

To more clearly show that reference number 20 denotes the outer perimeter an arrow has been added to the end of the reference line. Additionally the Specification in the last two lines on page 6 states that reference number 20 indicates the outer perimeter.

*The drawings have been objected to because in Figure 1b it has been alleged that the ridge at the opposite end adjacent 20 in Figure 1a is not shown.*

Appellants have added another circle around the circumference of the existing circle of 1b to denote the ridge at the opposite end adjacent 20 in Figure 1a.

*The drawings have been objected to because it has been alleged that Figure 2 is not a cross section along 2-2 as described on page 3.*

Appellants have added reference number 22 to the drawing to denote the longitudinal axis and have amended the description of Figure 2 to state that it is a cut out cross-section view along the longitudinal axis as originally noted with the phrase as described on page 3 of the Specification, "a line 2-2 of FIG. 1a" and page 7, lines 15-16 "Figure 2 shows a tampon holder tube 19 containing a tampon 14 which can be viewed through a cut out."

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*The drawings have been objected to because it has been alleged that Figure 2 the bracket denoted by reference number 26 does not denote only the end of the tampon 14 as described.*

The brackets from reference number 26 denoting the withdrawal end of the tampon have been changed to a line.

*The drawings have been objected to because it has been alleged that Figure 5 does not clearly denote reference number 15 therein.*

The line with the arrows from reference number 15 denoting the tampon top portion has been changed to a bracket.

#### Description

*The description of Figure 2 on page 3 has been objected to because it has been alleged that the description of Figure 2 on page 3 is inconsistent with the Figure 2 and page 7, lines 15-16.*

Appellants have added reference number 22 to the drawing to denote the longitudinal axis and have amended the description of Figure 2 to state that it is a cut out cross-section view along the longitudinal axis as originally noted with the phrase as described on page 3 of the Specification, "a line 2-2 of FIG. 1a" and page 7, lines 15-16 "Figure 2 shows a tampon holder tube 19 containing a tampon 14 which can be viewed through a cut out."

*It has been alleged that the relationship between the tampon and the cap is unclear, as in claim 1, Appellant claims a cap permanently associated with the tube. The Office Action of 1 November 2006 applied the following definition to the term*



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"associated"-- "to bring into company with one another, join in a relationship". Using this definition the Office Action alleged that, a cap "permanently associated" with the tube interpreted in light of this definition, and page 5, line 20 and page 11, lines 7-10 is deemed to require permanent joining or attaching, directly or indirectly, of the cap with the tube. The Office Action further alleged that Claim 1 further requires the tampon, i.e. some portion thereof, to "contact" the cap during expulsion to reorient the tampon with regard to the tube. The Office Action further alleged that the definition of "contact" as usually defined means "to touch", yet, despite the cancellation of claims 3-4, the specification still describes the cap remains in association with the end of the tampon and/or the cap remains joined to the end. The Office Action compared page 2, lines 26-28, the fourth full paragraph on page 7, the first full paragraph on page 8, and section I. on pages 9-11 and alleged that they do not clearly delineate the invention. Therefore, the Office Action alleged that it is still unclear whether the terminology of claim 1 requires touching but not necessarily "joining" and "association", i.e. "associated" and "joined" appear to both require some type of connection, i.e. at a minimum indirect connection, and whether such is with respect to at least a portion thereof but not necessarily the end of the end because the description used to interpret the claim terminology still uses the terminology "remains in association" with the end or "remains joined" with the end, i.e. does the tampon touch the cap at a minimum or is it associated or joined thereto? Some portion at a minimum or the end? The Office Action further alleged that if at least some portion of the tampon is joined or associated, the entire tampon is also, i.e. at least indirectly, i.e. if the end remains associated or joined so does the entire tampon.

The description of the tampon and rupturable membranous cap is set forth on page 2, lines 19-23 of the Specification, "The rupturable membranous cap covers at least a portion of the insertion end of the tampon. During expulsion of the tampon from the tampon holder tube, the tampon contacts the rupturable membranous cap and the rupturable membranous cap reorients the tampon into a direction substantially non-aligned to the longitudinal axis of the tampon holder tube." Therefore, it is Appellants' position that the relationship between the tampon and the membranous cap during expulsion is clear.

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Rejection Under 35 U.S.C. §112, First Paragraph

*Claims 1-11 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as their invention.*

Appellants respectfully traverse the rejection of claims 1, 2 and 5-11 under 35 U.S.C. §112, second paragraph. The description of the relationship between the tampon and rupturable membranous cap is set forth on page 2, lines 19-23 of the Specification, "The rupturable membranous cap covers at least a portion of the insertion end of the tampon. During expulsion of the tampon from the tampon holder tube, the tampon contacts the rupturable membranous cap and the rupturable membranous cap reorients the tampon into a direction substantially non-aligned to the longitudinal axis of the tampon holder tube." Therefore, the language in claim 1, "said tampon contacts said...cap" is definite and adequately described in the Specification.

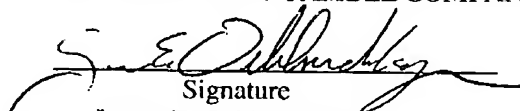
It is Appellants' position that claim 1 as written, is clear, and distinctly claims the subject matter that Applicants regard as their invention and that the rejections should be withdrawn.

SUMMARY

In view of all of the above, it is respectfully submitted that the claims 1, 2 and 5-11 be allowed on appeal.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

  
Signature  
James E. Oehlenschlaeger

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Date: 02 April 2007

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#### CLAIMS APPENDIX

1. (Original) A feminine hygiene product, comprising:
  - a) a tampon comprising an outer tampon perimeter, a withdrawal end opposed to an insertion end, said insertion end comprising a top portion and
  - b) a tampon applicator comprising a rupturable membranous cap permanently associated with a tampon holder tube,  
  
said tampon holder tube comprising a hollow interior portion, an interior surface, an exterior surface, an outer perimeter, a longitudinal axis, a first end dimensioned for insertion into the vaginal cavity, and a second end positioned oppositely to said first end,  
  
said tampon being housed in said tampon holder tube within said hollow interior portion of said tampon holder tube and substantially aligned with said longitudinal axis of said tampon holder tube in a pre-expelled position,  
  
said rupturable membranous cap covering at least a portion of said insertion end of said tampon, whereby during expulsion of said tampon from said tampon holder tube, said tampon contacts said rupturable membranous cap, thereby reorienting said tampon into a direction substantially non-aligned to said longitudinal axis of said tampon holder tube.
2. (Original) The feminine hygiene product according to Claim 1 wherein said tampon comprises a fluid permeable bag and absorbent material loosely dispersed within said fluid permeable bag.
- 3-4. (Cancelled)

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5. (Original) The feminine hygiene product according to Claim 1 wherein said tampon rotates during expulsion from said tampon applicator.
6. (Original) The feminine hygiene product according to Claim 1 wherein at least a portion of said tampon and at least a portion of said rupturable membranous cap rotate together during expulsion.
7. (Original) The feminine hygiene product according to Claim 1 wherein said tampon applicator further comprises a plunger being slidably mounted in said hollow interior portion of said tampon holder tube, said plunger being adapted to expel said tampon through said first end of said tampon holder tube.
8. (previously presented) The feminine hygiene product according to Claim 1 wherein before expulsion of said tampon, said rupturable membranous cap further comprises a region of rupture and the tampon holder tube further comprises a tampon holder tube region of rupture.
9. (Original) The feminine hygiene product according to Claim 8 wherein said region of rupture on said rupturable membranous cap and said tampon holder tube region of rupture on said tampon holder tube are in contact with one another before expulsion of said tampon.
10. (Original) The feminine hygiene product according to Claim 8 wherein said region of rupture on said rupturable membranous cap and said tampon holder tube region of rupture on said tampon holder tube have a configuration selected from a group consisting of C-shaped, conical, diagonal, arched, parabolic, round, and semi-spherical.
11. (Original) The feminine hygiene product according to Claim 8 wherein said region of rupture on said rupturable membranous cap and said tampon holder tube region of rupture on said tampon holder tube comprise perforations.

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12. (Cancelled)

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#### EVIDENCE APPENDIX

No evidence is being submitted with this appeal brief.

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#### RELATED PROCEEDINGS APPENDIX

No decisions have been rendered by a court or board in any proceeding identified pursuant to 37 C.F.R. §41.37(c)(1)(ii).